Standard Chartered Bank v Standard Chartered Bank Officers' Association

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R1-25-3 TAHUN 1994
LOW HOP BING J
8 AUGUST 1995

Administrative Law *— Remedies — Certiorari — Quashing the award of the Industrial Court — Whether Industrial Court erred in law and exceeded its jurisdiction — Meaning of overtime — Employment Act 1955 s 60A(3)(b)*

This was an originating motion filed by the bank for an order of certiorari to quash the award of the Industrial Court handed down on 27 November 1993 on grounds of err or in law and exceeding its jurisdiction. The issue was 'whether an officer of the Standard Chartered Bank who is required to work outside the normal hours of work is entitled to be paid a meal allowance in accordance with the rates as determined by the Malaysian Commercial Banks Association and the Association of Bank Officers Peninsula Malaysia'.

Held, dismissing the application:

(1) The Industrial Court had not erred in law, neither had it acted in excess of its jurisdiction, when it held as follows: Article 20(1) of the 1991 agreement is clear and unambiguous. It provides for the payment of meal allowance to officers who are required to work outside the normal hours of work. Work performed outside the normal work is, in fact, overtime work. This view is fortified by s 60A(3)(b) of the Employment Act 1955. Whatever one wants to call it, meal allowance paid to officers who are required to work outside their normal hours of work is overtime meal allowance.

(2) Meal allowance for an officer who was required 'to work outside the normal hours of work' and 'overtime meal allowance' were synonymous.

(3) In the instant case, the Industrial Court had not exceeded its jurisdiction nor made an error of law in handling down the said award, the said award could not be quashed.

[Bahasa Malaysia summary

Ini adalah usul pemula yang difailkan oleh pihak bank untuk satu perintah certiorari untuk membatalkan award Mahkamah Perindustrian yang diberikan pada 27 November 1993 atas alasan kesilapan undang-undang dan melebihi bidang kuasa. Isu adalah 'sama ada seorang pegawai Bank Standard Chartered yang dikehendaki bekerja di luar waktu kerja biasa adalah berhak untuk

dibayar elaun makan mengikut kadar seperti yang ditetapkan oleh Persatuan Bank-Bank Komersial Malaysia dan Persatuan Pegawai-Pegawai Bank Semenanjung Malaysia'. A

Diputuskan, menolak permohonan:

(1) Mahkamah Perindustrian tidak melakukan kesilapan undang-undang. Ia juga tidak bertindak melebihi bidang kuasanya, apabila ia memutuskan seperti berikut: Perkara 20(1) perjanjian 1991 adalah jelas dan tiada keraguan. Ia memperuntukkan bayaran elaun makan kepada pegawai-pegawai bank yang dikehendaki bekerja di luar waktu kerja biasa. Kerja yang dilakukan di luar waktu kerja biasa adalah, sebenarnya, kerja lebih masa. Pendapat ini disokong oleh s 60A(3)(b) Akta Pekerjaan 1955. Apa pun seseorang mahu memanggilnya, elaun makan yang dibayar kepada pegawai-pegawai yang dikehendaki bekerja di luar waktu kerja biasa mereka adalah elaun makan lebih masa. B C D

(2) Elaun makan untuk seseorang pegawai yang dikehendaki 'bekerja di luar waktu kerja biasa' dan 'elaun makan lebih masa' adalah sama erti.

(3) Dalam kes ini, Mahkamah Perindustrian tidak melebihi bidang kuasanya atau pun membuat kesilapan undang-undang dalam memberikan award tersebut. Award tersebut tidak boleh dibatalkan.] E

Notes

For cases on remedies, see 1 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 96–403; [1994] *Mallal's Digest* 11–22; [1995] *Mallal's Digest* 7–20. F

Cases referred to

Enesty Sdn Bhd v Transport Workers Union & Anor [1986] 1 MLJ 18 (refd) G

Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union [1995] 2 MLJ 317 (refd)

Legislation referred to

Employment Act 1955 s 60A(3)(b) H

RR Singam & Lim for the applicant.
Lobo & Associates for the first respondent.

Low Hop Bing J: I

Background facts

This matter arises out of Industrial Court award No 387 of 1993 ('the said award') which was handed down on 27 November 1993.

A The applicants have filed this originating motion for an order of certiorari to quash the said award.

The issue before me is 'whether an officer of the Standard Chartered Bank who is required to work outside the normal hours of work is entitled to be paid a meal allowance in accordance with the rates as B determined by the Malaysian Commercial Banks Association (MCBA) and the Association of Bank Officers Peninsular Malaysia (ABOM)'.

It is the contention of the applicant that the Industrial Court erred in law and exceeded its jurisdiction when it answered the above question in the affirmative in the said award.

C In the Industrial Court, the first respondent sought an interpretation of art 20 (1) (meal allowance to be paid in accordance with the rates as determined by MCBA/ABOM Industrial Court award) of the Collective Agreement, Cog No 366/91 and art 36(1) of the same Collective Agreement (Implementation — arrears under arts 17 and 20 — are payable from 1 August 1991 to date of payment). The first respondent D submitted that arts 20(1) and 36(1) of the 1991 agreement should be interpreted as follows:

> On an interpretation of arts 20 and 36(1) of the Collective Agreement read with award No 254 of 1992, officers within the scope of the Collective Agreement are entitled to arrears of overtime meal allowance with effect E from 1 August 1991 (Article 36(1) till the date of payment of the same).

The relevant portion of art 20(1) reads as follows:

> (1) Work Outside Normal Hours
>
> An Officer who is required to work outside the normal hours of work shall be paid a meal allowance in accordance with the rates as F determined by the MCBA/ABOM Industrial Court award.

It was contended for the applicant that the Standard Chartered Bank (SCB) and Standard Chartered Bank Officers Association (SCBOA) have not negotiated on 'overtime meal-allowance'.

G Upon a proper perusal of art 20(1) above, it is eminently clear to me, as it is to the Industrial Court when it handed down the said award, that meal allowance is an entitlement given to an officer who is required 'to work outside normal hours of work'. These operative words in my considered opinion are significant in that they are indeed the paraphrase of the word 'overtime'.

H It is therefore apparent to me that the Industrial Court has not erred in law, neither has it acted in excess of jurisdiction, when it held as follows:

> Article 20(1) of the 1991 agreement is clear and unambiguous. It provides for the payment of meal allowance to officers who are required to work outside I the normal hours of work. Work performed outside the normal hours of work is, in fact, overtime work. And we are fortified in our view by s 60A(3)(b) of the Employment Act 1955. Whatever one wants to call it, meal allowance paid to officers who are required to work outside their normal hours of work is overtime meal allowance. And we so hold accordingly.

The word 'overtime' is defined in s 60A(3)(b) of the Employment Act 1955 and it means the number of hours of work carried out in excess of the normal hours of work per day. This is what has been expressly stated in art 20(1) although the word 'overtime' is not used therein.

I agree with the interpretation by the Industrial Court that 'meal allowance' for an officer who is required 'to work outside the normal hours of work' and 'overtime meal allowance' are synonymous. It is to my mind a correct interpretation, without an error of law. It is therefore within its jurisdiction and cannot be in excess of jurisdiction. The categories 'meal allowance' with the accompanying words and 'overtime meal allowance' are interchangeable and have the same effect and connotation. The Industrial Court, therefore, acted within the scope of s 33 of the Industrial Relations Act 1967.

If there is no error of law, the remedy of certiorari will not issue. An award of the Industrial Court which is founded upon an error of law (whether such error is one based on interpretation or otherwise, would render it invalid and hence a nullity: *Enesty Sdn Bhd v Transport Workers Union & Anor* [1986] 1 MLJ 24; *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317.

Where, on the other hand, as in the instant case, the Industrial Court has not exceeded its jurisdiction nor made an error of law in handing down the said award, the said award cannot be quashed. By reason of the foregoing, there is no ground for me to interfere. The application is therefore dismissed with costs.

Application dismissed.

Reported by Richard Leung